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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

M.S.,

Petitioner,

v.

THE SUPERIOR COURT OF  
SAN BERNARDINO COUNTY,

Respondent;

SAN BERNARDINO COUNTY  
CHILDREN AND FAMILY SERVICES,

Real Party in Interest.

E055926

(Super.Ct.No. J242154)

OPINION

ORIGINAL PROCEEDINGS; petition for extraordinary writ. Gregory S. Tavill,  
Judge. Petition denied.

Allen S. Remes for Petitioner.

No appearance for Respondent.

Jean-Rene Basle, County Counsel, and Dawn M. Messer, Deputy County Counsel,  
for Real Party in Interest.

Petitioner, who is incarcerated, is the alleged father of four-year-old J.C. (minor), the subject of this dependency proceeding. He challenges the setting of a hearing pursuant to Welfare and Institutions Code section 366.26,<sup>1</sup> raising the single contention that the juvenile court erred in denying a continuance so he could be transported from prison to be present at the jurisdiction/disposition hearing. We find no error and, thus, deny the petition.

### FACTS

When an assault on his mother left her comatose, the minor and a half sibling were detained by San Bernardino County Children and Family Services (CFS). The morning of the detention hearing, December 20, 2011, the court was informed that the mother had died. The identity of minor's father was not known.

The jurisdiction/disposition hearing of January 10, 2012, was continued to allow CFS to perform an assessment of the home of the half sibling's father for potential placement of minor. Minor's father's identity remained unknown.

Subsequently, petitioner filed Judicial Council Form, form JV-505, alleging his belief that he is minor's father. Petitioner also stated his desire to participate in the proceedings, take a DNA test, and have minor placed with petitioner's mother until his release from prison.

At the continued jurisdiction/disposition hearing on February 27, 2012, petitioner was not present as he was incarcerated in state prison. The court appointed counsel for

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<sup>1</sup> Statutory references are to the Welfare and Institutions Code unless otherwise stated.

him and continued the hearing in order to allow time for paternity testing and an evaluation of the petitioner's mother's home for potential placement.<sup>2</sup>

Petitioner had not been transported to the continued jurisdiction/disposition hearing on March 26, 2012, apparently because the transport order had not been submitted to the prison authorities in sufficient time. In addition, paternity testing had not been completed.

Petitioner's counsel objected to going on with the hearing in his client's absence. The court, however, refused to continue the matter, noting that petitioner was merely an alleged father who is not entitled to services and the statutory time limits for conducting the jurisdiction and disposition hearings had already been exceeded. The court made the requisite jurisdictional findings, denied reunification services to petitioner, and scheduled a section 366.26 hearing on July 24, 2012. In addition, the court authorized the social worker to facilitate visits if and when petitioner was released from custody, and if the results of the paternity test showed that he is minor's biological father. In order to determine the suitability of placing the minor with petitioner's mother, the court also authorized CFS to conduct assessments of relatives under the ICPC (Interstate Compact on the Placement of Children) for concurrent planning.

### DISCUSSION

Although petitioner acknowledges that the refusal to continue the March 26, 2012 hearing did not deprive him of any constitutional right, he asserts that it did violate

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<sup>2</sup> Proceedings were dismissed with respect to minor's half sibling, who was placed in the care of his father.

statutory requirements. Under Penal Code section 2625, a prisoner must be given an opportunity to be present at a proceeding that seeks to adjudicate the child of that prisoner a dependent child of that court.<sup>3</sup>

However, on March 26, 2012, petitioner's status was not that of the minor's parent; he was merely the alleged father and, thus, did not have a statutory right to be present at the hearing.

An alleged father's rights are limited to establishing that he is entitled to presumed father status, and the juvenile court may terminate the alleged father's parental rights when the alleged father has had the opportunity to do so. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 811.) Due process for an alleged father requires only that he be given

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<sup>3</sup> Penal Code section 2625 provides in relevant part as follows:

“(b) In any proceeding . . . brought under Section 300 of the Welfare and Institutions Code, where the proceeding seeks to adjudicate the child of a prisoner a dependent child of the court, the superior court of the county in which the proceeding is pending, or a judge thereof, shall order notice of any court proceeding regarding the proceeding transmitted to the prisoner.”

“(d) Upon receipt by the court of a statement from the prisoner or his or her attorney indicating the prisoner's desire to be present during the court's proceedings, the court shall issue an order for the temporary removal of the prisoner from the institution, and for the prisoner's production before the court. No proceeding may be held under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 366.26 of the Welfare and Institutions Code and no petition to adjudge the child of a prisoner a dependent child of the court pursuant to subdivision (a), (b), (c), (d), (e), (f), (i), or (j) of Section 300 of the Welfare and Institutions Code may be adjudicated without the physical presence of the prisoner or the prisoner's attorney, unless the court has before it a knowing waiver of the right of physical presence signed by the prisoner . . . stating that the prisoner has, by express statement or action, indicated an intent not to appear at the proceeding.”

notice and an opportunity to appear and assert a position and attempt to change his paternity status. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 159-160.)

It is undisputed that petitioner was given notice, and he is currently being given an opportunity to change his status to that of biological and/or presumed father.<sup>4</sup> In refusing to continue the hearing, the juvenile court took no action to foreclose petitioner's pursuit of his parental rights. To the contrary, paternity testing was to take place, as well as an evaluation of petitioner's mother's home for placement of the minor. Visitation was even authorized contingent upon the results of the paternity test and petitioner's custody status.

Hearings in dependency proceedings may be continued only upon a showing of good cause. (§ 352, subd. (a).) Moreover, subdivision (b) of section 352 provides that no continuance shall be granted that would result in the dispositional hearing being completed longer than 60 days after the detention hearing. The dispositional hearing had been continued twice and, as the juvenile court pointed out, the 60-day time limit had been exceeded. Considering these limits, petitioner's status as an alleged father and, more importantly, the lack of prejudice to him, the juvenile court did not abuse its discretion. (*In re V.V.* (2010) 188 Cal.App.4th 392, 399.)

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<sup>4</sup> California law recognizes three types of fathers: presumed, natural, and alleged. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 448.) A presumed father is entitled to appointed counsel, custody (if there is no finding of detriment) and reunification services. (*In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120.) A man who has been established as the child's biological parent is a natural father. (*Zacharia D.*, at p. 449, fn. 15.) A man who may be the father of the child but has not yet been established as the natural or presumed father is an alleged father. (*In re Jerry P.* (2002) 95 Cal.App.4th 793, 801; *Zacharia D.*, at p. 449, fn. 15.)

DISPOSITION

The petition is denied.

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KING  
J.

We concur:

HOLLENHORST  
Acting P. J.

McKINSTER  
J.